

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRAND DESIGN CO., INC.)	
d/b/a HOUSE INDUSTRIES,)	
)	
Plaintiff)	Civil Action No.
)	12-CV-3563 (KAM)(RER)
v.)	
)	
NBCUNIVERSAL MEDIA, LLC and)	
DELIVERY AGENT, INC.,)	
)	
Defendants.)	
)	

ANSWER OF DEFENDANT DELIVERY AGENT, INC.¹

Defendant Delivery Agent, Inc. (“Delivery Agent”), through counsel, hereby submits its Answer to the Complaint of plaintiff Brand Design Co., Inc. d/b/a House Industries (“Brand Design”) as follows:

Nature and Substance of the Action

1. Delivery Agent states the allegations in paragraph 1 do not require a response. To the extent any response is required, Delivery Agent admits that Brand Design filed an action under the Copyright Act and state law for breach of contract.

2. Delivery Agent denies it engaged in copyright infringement. Delivery Agent states the remaining allegations in paragraph 2 do not require a response. To the extent any response is required, such allegations are denied.

3. Denied.

¹ Defendant Delivery Agent contends that venue is not proper in the Eastern District of New York and is seeking to transfer this action to the United States District Court for the District of Delaware. By filing this answer, Delivery Agent does not concede that venue is proper in this District.

4. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, and on that basis denies those allegations.

5. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, and on that basis denies those allegations.

6. Delivery Agent states the allegations in paragraph 6 do not require a response. To the extent any response is required, such allegations are denied.

Jurisdiction and Venue

7. Delivery Agent admits that the plaintiff brought this action under 17 U.S.C. § 101 et seq. and seeks damages thereunder. Brand Design denies the remaining allegations in paragraph 7.

8. Delivery Agent admits that this Court has jurisdiction over the subject matter of the claims asserted. Delivery Agent denies that the Court has personal jurisdiction over it in this action. Delivery Agent further states that, after reasonable investigation, it can neither admit nor deny that the Court may properly exercise personal jurisdiction over any other defendant.

9. Denied.

The Parties

10. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10, and on that basis denies those allegations.

11. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, and on that basis denies those allegations.

12. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, and on that basis denies those allegations.

13. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13, and on that basis denies those allegations.

14. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, and on that basis denies those allegations.

15. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and on that basis denies those allegations.

16. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16, and on that basis denies those allegations.

17. Admitted.

18. Admitted.

19. Delivery Agent denies that it conducts business on the Internet via its website. Delivery Agent further states that its website is for informational purposes only.

20. Admitted.

Facts Common to All Claims

21. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and on that basis denies those allegations.

22. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and on that basis denies those allegations.

23. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23, and on that basis denies those allegations.

24. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, and on that basis denies those allegations.

25. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25, and on that basis denies those allegations.

26. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26, and on that basis denies those allegations.

27. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, and on that basis denies those allegations.

28. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, and on that basis denies those allegations.

29. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29, and on that basis denies those allegations.

30. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30, and on that basis denies those allegations.

31. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31, and on that basis denies those allegations.

32. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32, and on that basis denies those allegations.

33. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33, and on that basis denies those allegations.

34. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34, and on that basis denies those allegations.

35. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35, and on that basis denies those allegations.

36. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36, and on that basis denies those allegations.

37. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, and on that basis denies those allegations.

38. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38, and on that basis denies those allegations.

39. Denied.

40. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40, specifically what plaintiff's records show, and on that basis denies those allegations.

41. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, specifically what plaintiff's records show, and on that basis denies those allegations.

42. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42, specifically what plaintiff's records show, and on that basis denies those allegations.

43. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43, specifically what plaintiff's records show, and on that basis denies those allegations.

Defendant's Actions

44. Delivery Agent admits those allegations in paragraph 44 that relate to its own actions. Delivery Agent further states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations made against defendant NBCUniversal Media, LLC ("NBCUniversal Media"), and therefore denies those allegations.

45. Delivery Agent admits those allegations in paragraph 45 that relate to its own actions. Delivery Agent further states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations made against NBCUniversal Media, and therefore denies those allegations.

46. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46, and on that basis denies those allegations.

47. Delivery Agent states that the document attached as Exhibit F speaks for itself. To the extent the allegations mischaracterize or misstate Exhibit F, they are denied. Delivery Agent further states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning what a third party's website "expressly requires," and therefore denies those allegations. Except as expressly admitted by the foregoing, Delivery Agent denies the allegations in paragraph 47.

48. Admitted.

49. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49, specifically what plaintiff's records show, and on that basis denies those allegations.

50. Denied. Delivery Agent notes further that this paragraph refers to "Defendant's" (in the singular), but fails to identify the defendant at which the allegation is directed.

51. Denied. Delivery Agent notes further that this paragraph refers to "Defendant's" (in the singular), but fails to identify the defendant at which the allegation is directed.

52. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52, and on that basis denies those allegations.

53. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53, and on that basis denies those allegations.

54. Denied. Delivery Agent notes further that this paragraph refers to "Defendant's" (in the singular), but fails to identify the defendant at which the allegation is directed.

55. Denied. Delivery Agent notes further that this paragraph refers to "Defendant's" (in the singular), but fails to identify the defendant at which the allegation is directed.

56. Denied. Delivery Agent notes further that this paragraph refers to "Defendant's" (in the singular), but fails to identify the defendant at which the allegation is directed.

57. Denied.

**First Cause of Action
Copyright Infringement
17 U.S.C. 101 et seq.**

58. Delivery Agent hereby restates and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 57 of the Complaint as if fully set forth herein.

59. Denied. Delivery Agent notes further that this paragraph refers to “Defendant’s” (in the singular), but fails to identify the defendant at which the allegation is directed.

60. Denied. Delivery Agent notes further that this paragraph refers to “Defendant’s” (in the singular), but fails to identify the defendant at which the allegation is directed.

61. Denied.

62. Denied.

**Second Cause of Action
Breach of Contract**

63. Delivery Agent hereby restates and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64, and on that basis denies those allegations.

65. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65, and on that basis denies those allegations.

66. Delivery Agent states that, after reasonable investigation, it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66, specifically what plaintiff’s records show, and on that basis denies those allegations.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a claim against Delivery Agent upon which relief can be granted.

Second Affirmative Defense

Venue is not proper in the Eastern District of New York.

Third Affirmative Defense

The Eastern District of New York does not have personal jurisdiction over Delivery Agent.

Fourth Affirmative Defense

The claims asserted in plaintiff's Complaint are barred in whole or in part by laches, waiver, and/or acquiescence.

Fifth Affirmative Defense

The claims asserted in plaintiff's Complaint are barred in whole or in part by license and/or estoppel.

Sixth Affirmative Defense

Delivery Agent's actions were protected under the doctrine of fair use.

Additional Affirmative Defenses

Defendant Delivery Agent reserves the right to amend its Answer and plead additional or more specific defenses as warranted by the facts determined through the conclusion of the discovery process.

PRAYER FOR RELIEF

WHEREFORE, defendant Delivery Agent respectfully requests that this Court:

- A. Enter judgment dismissing each count of the Complaint in its entirety, with prejudice;
- B. Award Delivery Agent the reasonable attorneys' fees, expenses and costs associated with this action under all applicable law; and
- C. Grant such further relief as the Court deems just and proper.

JURY DEMAND

Delivery Agent respectfully demands a trial by jury for all claims and issues allowable under law.

Respectfully submitted,

NIXON PEABODY LLP

By: /s/ Kristin Jamberdino
Kristin Jamberdino (KJ 2359)
437 Madison Avenue
New York, New York 10022
Tel: (212) 940-3000
Fax: (212) 940-3111
Email: kjamberdino@nixonpeabody.com

*Attorney for NBCUniversal Media, LLC and
Delivery Agent, Inc.*